Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

REPLY COMMENTS OF PUERTO RICO TELEPHONE COMPANY

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to 47 C.F.R. § 1.415, hereby files its Reply Comments on the Commission's Further Notice of Proposed Rule Making ("FNPRM") in the above-captioned proceeding.[1]

I. AN AGGREGATE SPECTRUM CAP SHOULD NOT BE IMPOSED

In the FNPRM, the Commission proposes to restrict the aggregate spectrum available to individual providers of Commercial Mobile Radio Services ("CMRS") to 40 MHz per geographic market. See FNPRM ¶¶ 86-105. PRTC agrees with the vast majority of those who commented in this proceeding that such a cap is both unnecessary and unwise. Presently, there is no demonstrated pattern of spectrum hoarding in the mobile communications market, nor is such conduct likely given the Commission's existing CMRS spectrum caps such as those for PCS

1. FCC 94-100 (rel. May 20, 1994).

and PCS/Cellular. If spectrum hoarding does arise, it can be fully addressed through future rule making proceedings targeting the specific practices of concern or through the Commission's power to refuse to grant transfer and assignment applications which are contrary to the public interest.

Not only is the proposed cap superfluous but, as the detailed comments of many parties show, it would present an administrative quagmire for FCC Staff.[2] Even more disturbing is the specter that the cap would actually undermine, rather than foster, the robust competition now typical of CMRS.[3] By arbitrarily limiting the participation of certain CMRS licensees -- who may possess the greatest technical expertise and experience -- an aggregate cap could impede the introduction of innovative service offerings.[4] As new

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2. See Bell Atlantic at 9 (A cap "introduces enormously complex issues such as how to measure market power, how to determine 'markets' where service areas are not consistent, how to compare voice and non-voice services, and how to determine 'how much spectrum is enough' among CMRS generally.").

3. See, e.g., AMTA at 30 ("adoption of a CMRS spectrum cap will inhibit, not enhance, competition"); NABER at 37 ("[A] spectrum cap in a mature market thwarts the marketplace forces which have led to a competitive wireless communications infrastructure.").

4. See, e.g., CTIA at 9 ("a spectrum cap can impose a real burden to the available spectrum being utilized according to its highest economic use"); McCaw at 15 (A spectrum cap "would severely hamper existing operators' ability to offer an array of service packages by restricting access to newly authorized spectrum allocations."); NYNEX at 5 ("[A]n all encompassing cap . . . will stifle innovation and creativity in the marketplace.").

services within CMRS arise, the Commission should address spectrum cap issues service-by-service. The broad brush of a solitary aggregate cap ignores today's market realities and should be rejected.[5]

II. IF THE COMMISSION ELIMINATES THE PART 90 PROHIBITION ON COMMON CARRIER SERVICE, IT SHOULD ALSO ELIMINATE THE PART 22 PROHIBITION ON PRIVATE SERVICE

In the FNPRM, the Commission seeks comment on eliminating the Part 90 prohibition on the provision of common carrier service for SMR, 220 MHz, Business Radio, and Part 90 paging services. FNPRM at ¶ 78. PRTC believes, as many commenters do, that regulatory harmonization requires that if Part 90 licensees are permitted to offer both private and common carrier services under a single license, the same should hold true for Part 22 licensees.[6] Disparate treatment would

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5. See PCIA at 9 ("Static spectrum caps simply cannot keep pace with the dynamic and fluid nature of the wireless marketplace.").

6. See, e.g., GTE at 12 ("retention of these restrictions imposes unfair and unnecessary regulatory impediments"); McCaw at 19 ("the FCC should . . . authorize all CMRS providers to offer private and commercial mobile services"); PCIA at 18 ("supports the Further Notice proposal . . . to eliminate restrictions on permissible communications and permit use of use of transmitters for both common carrier and private operations"); RAM MOBILE DATA at 13 ("mobile service providers should be able to provide CMRS and PMRS services under a single license").

undermine the Congressionally mandated goal of regulatory parity that is the heart of this proceeding.[7]

III. A FREQUENCY ADVISORY COMMITTEE FOR PART 22 PAGING SERVICES IS UNWARRANTED

NABER requests to "be designated as the Commission's frequency advisory committee for the Part 22 paging channels." NABER at 24. NABER's proposal is beyond the scope of this proceeding and should be rejected. If the Commission considers NABER's proposal it should conclude that it is unwise. NABER provides no basis for its proposal. It belies common sense to suggest, as NABER does, that requiring paging providers to seek frequency coordination through NABER would improve "the Commission's speed of service." Id. Paging providers are fully capable of performing their own frequency selection -- as they have for many years -- either in-house (as PRTC does) or through an outside consultant. NABER's proposal should be rejected.

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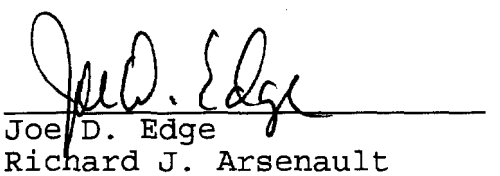
7. In fact, the Commission has "tentatively conclude[d] that permitting a single transmitter to operate on both common carrier and private carrier channels will not disrupt or impair service to existing Part 22 subscribers." Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-Common Carrier Services, Notice of Proposed Rule Making And Order, at 2 ¶7, FCC 94-113 (rel. June 9, 1994).

CONCLUSION

WHEREFORE, PRTC respectfully requests the Commission to adopt the foregoing principles in this rule making.

July 11, 1994

Respectfully submitted,



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